

**Applicant:** Joseph A. Kwak  
**Application No.:** 10/084,043

**REMARKS**

Claims 1-6, 10 and 11 are currently pending in this application. The Examiner has rejected Claims 1-6, 10 and 11. The Applicant has amended claim 1 and canceled claim 11. All claim amendments are fully supported in the specification. No new matter has been added.

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**Double Patenting – Obviousness-type**

The Examiner rejected claims 1-6 and 11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 7,149,192.

The Applicants are willing to submit a terminal disclaimer to overcome the rejections over the claims of U.S. Patent No. 7,149,192, if the Examiner indicates the Application to be otherwise allowable.

**35 U.S.C. §112**

The Examiner rejected claims 1-6, 10 and 11 under 35 U.S.C. §112 first paragraph. The Applicants have amended claim 1 and canceled claim 11 and submit that the 35 U.S.C. §112 rejection is overcome. Accordingly, the Applicants respectfully request that the Examiner withdraw the 35 U.S.C. §112 rejection.

**35 U.S.C. §103(a) – Claims 1, 2, 5, 6 and 10**

The Examiner rejected claims 1, 2, 5, 6 and 10 under 35 U.S.C. §103(a) as being unpatentable over Schramm et al. (U.S. Ref. No. 6,208,663) in view of Malkamaki et al. (U.S. Ref. No. 6,735,180) Fong et al. (U.S. Ref. No. 6,760,860), and Yonge III et al. (U.S. Ref. No. 6,522,650).

Among other deficiencies in the Schramm, Malkamaki, Fong, Yonge, and Dahlman references, there is no disclosure, teaching, or suggestion in the Schramm, Fong, Malkamaki, or Yonge "wherein the physical layer ARQ mechanism comprising a physical layer transmitter operates transparently with respect to the higher layer ARQ mechanism" and "wherein a mechanism configured to receive the corresponding acknowledgment for the given packet operates transparently with respect to the higher layer ARQ mechanism" as is recited in the Applicant's amended independent claim 1.

Accordingly, the Applicant's amended independent claim 1 is patentable over the Schramm, Malkamaki, Fong, and Yonge references, whether taken alone or in any combination with one another.

The Applicant's claims 2, 5, 6, and 10 depend either directly or indirectly from Applicant's patentable independent claim 1, and are therefore patentable for at least the same reason as Applicant's patentable amended independent claim 1.

In addition, the Applicant's dependent claim 10 recites a method "wherein the physical layer ARQ mechanism reduces retransmissions required by the higher layer ARQ mechanism" which is not taught nor suggested in the Schramm, Malkamaki, Fong, or Yonge references, whether taken alone or in any combination with one another. Therefore, the Applicant's dependent claim 10 is patentable for

this reason as well as its dependence from Applicant's patentable amended independent claim 1.

**35 U.S.C. §103(a) – Claims 3 and 11**

The Examiner rejected claims 3 and 11 under 35 U.S.C. §103(a) as being unpatentable over Schramm in view of Malkamaki, Fong, and Yonge as applied to claim 1, and further in view of Agee (U.S. Ref. No. 6,128,276).

As stated previously, neither the Schramm, nor the Malkamaki, nor the Fong, nor the Yonge references disclose, teach or suggest "wherein the physical layer ARQ mechanism comprising a physical layer transmitter operates transparently with respect to the higher layer ARQ mechanism" and "wherein a mechanism configured to receive the corresponding acknowledgment for the given packet operates transparently with respect to the higher layer ARQ mechanism" as is recited in the Applicant's amended independent claim 1. Moreover, the Agee reference fails to cure these deficiencies in the Schramm, Malkamaki, Fong, and Yonge references.

Since claim 3 indirectly depends from Applicant's patentable amended independent claim 1, it is patentable for at least the same reason as Applicant's patentable amended independent claim 1.

**35 U.S.C. §103(a) – Claim 4**

The Examiner rejected claim 4 under 35 U.S.C. §103(a) as being unpatentable over Schramm in view of Malkamaki, Fong, and Yonge as applied to claim 1, and further in view of Birru (U.S. Pub. No. 2002/0037058).

As stated previously, neither the Schramm, nor the Malkamaki, nor the Fong, nor the Yonge references disclose, teach or suggest "wherein the physical layer ARQ mechanism comprising a physical layer transmitter operates transparently with respect to the higher layer ARQ mechanism" and "wherein a mechanism configured to receive the corresponding acknowledgment for the given packet operates transparently with respect to the higher layer ARQ mechanism" as is recited in the Applicant's amended independent claim 1. Moreover, the Birru reference fails to cure these deficiencies in the Schramm, Malkamaki, Fong, and Yonge references.

Accordingly, since claim 4 depends from Applicant's patentable amended independent claim 1, it is patentable for at least the same reason as Applicant's patentable amended independent claim 1.

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**CONCLUSION**

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the Applicant's undersigned attorney by telephone at the Examiner's convenience.

In view of the foregoing remarks and amendments, the Applicant respectfully submits that the present application, including claims 1-6 and 10, is in condition for allowance and a notice to that effect is respectfully solicited.

Respectfully submitted,

Joseph A. Kwak

By Thomas A. Mattioli  
Thomas A. Mattioli  
Registration No. 56,773  
(215) 568-6400

Volpe and Koenig, P.C.  
United Plaza, Suite 1600  
30 South 17th Street  
Philadelphia, PA 19103

TAM/yil